UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

PUBLIC SERVICE ELECTRIC
AND GAS COMPANY

and Case No. 4-CA-22519

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO

Richard P. Heller, Esq., for the General Counsel.[1]
Patrick Westerkamp, Esq., for the Respondent.
Richard P. Crawshaw, for the Charging Party.

DECISION

Statement of the Case

GEORGE ALEMÁN, Administrative Law Judge. Pursuant to a charge filed by International Brotherhood of Electrical Workers, AFL-CIO (herein the IBEW or International Union) on March 4, 1994, the Regional Director for Region 4 of the National Labor Relations Board (the Board) issued a complaint on July 22, 1994, amended on July 31, 1994, alleging that Public Service Electric and Gas Company (the Respondent), had violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by refusing to provide its Local 1576 with certain requested information which was necessary for, and relevant to, Local 1576's performance of its role as the exclusive collective bargaining representative of certain of the Respondent's employees. In a timely filed answer, the Respondent denied having committed any unfair labor practices. A hearing in the matter was held before me in Philadelphia, Pennsylvania on October 15-16, 1996, during which all parties were afforded full opportunity to appear, to call and examine witnesses, to submit oral as well as written evidence, and to argue on the record.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel[2] and the Respondent, I make the following[3]

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[1] Herein referred to as the General Counsel.

[2] The General Counsel filed a posthearing motion to strike certain factual assertions made by Respondent in its posthearing brief (at p. 4, lines 13-14; p. 5, lines 2-6, 7-10) on grounds that such assertions are unsupported by the record evidence. I agree with the General Counsel that said assertions lack evidentiary support and should be stricken. The General Counsel's motion is therefore granted. Birch Run Welding, 286 NLRB 1316, fn. 3 (1987).

The General Counsel's request to correct certain minor inaccuracies in the record is granted (see GC posthearing brief, p. 1, fn. 1).

[3] References to General Counsel's Exhibits, Respondent's Exhibits, or Joint Exhibits are

Continued

Findings of Fact

I. Jurisdiction

The Respondent is a public utility with facilities located in Hancocks Bridge, New Jersey, known as the Artificial Island Nuclear Generating Stations (herein Artificial Island), where it is engaged in the generation, transmission, distribution, and sale of electricity and the distribution of natural gas. During the past year, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of $1,000,000 and purchased and received at its facilities goods valued in excess of $50,000 directly from points located outside the State of New Jersey. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I find, that Local 1576 is a labor organization within the meaning of Section 2(5) of the Act. However, in its answer the Respondent denied that the International Union is a Section 2(5) labor organization.[4] The credible and undisputed evidence of record reveals otherwise. Thus, Richard Crawshaw, its international representative, credibly testified that the purpose of the International Union is to represent its membership through its local unions, one of which is Local 1576, and that it exists in part for the purpose of dealing with employers concerning pay rates and working conditions of employees. Such representation includes, inter alia, assisting the Locals in negotiations and arbitrations with employers, and responding to queries from its members on a wide range of issues (e.g., pension matters, rights violations, desires to organize, etc.). Further, its membership is often used for organizational activities, and also participates in any changes to be made to the International Union's constitution. While the International Union may not directly enter into collective bargaining agreements with employers, it is patently clear that it does deal with employers regarding labor disputes and conditions of work. Accordingly, I find that the International Union has at all relevant times been a labor organization within the meaning of Section 2(5) of the Act. San Francisco Building Trades Council (Gould Electric), 297 NLRB 1050, 1051 (1991).

II. Alleged Unfair Labor Practices

A. Factual Background

The Respondent operates three nuclear generating plants, known as Salem I, Salem II, and Hope Creek, at Artificial Island. Since about 1980, many of the Respondent's employees at Artificial Island were represented by Local 1576.[5] One such group of employees was a classification known as Radiation Protection Technicians (RPT's), also referred to during the

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identified respectively in this decision as GCX, RX, or JX, followed by the applicable exhibit number. Reference to a Transcript cite is shown as "Tr." followed by the appropriate page(s).

[4] When asked at the hearing if it was disputing that the International Union is a Section 2(5) labor organization, Respondent's counsel stated, "I am disputing that it is a labor organization in the context of Public Service Electric and Gas Company in the collective bargaining relationship it has." (Tr. 33).

[5] Local 1576 had been part of a larger organization known as System Council U-2 which represented 14 locals. Although Local 1572 was a separate and distinct entity in its own right, the System Council served as its spokesman regarding such matters as negotiations, arbitration, grievance procedure, etc. In July 1994, these 14 locals merged and became IBEW Local 94, with Charles Wolfe as its president and business manager.

hearing as Health Physics Technicians (HP's or HP Techs), whose function it was to ensure the safety of employees by monitoring, in various manner, radiological environmental conditions at the plants (see JX-11).[6] The Respondent's most recent collective bargaining agreement with Local 1576 was effective from May 1, 1992 through April 30, 1996 (JX-1).[7] Under the terms of that agreement the Respondent, inter alia, agreed to recognize the International Union's representatives as the representatives of the various signatory locals, including Local 1576 (JX-1, Art. Ic).

The record reflects that the Respondent often undergoes what is commonly referred to in the industry as an "outage" during which a nuclear plant will go off-line or be shut down for refueling, periodic maintenance, or for the performance of repairs. Outages, which often last several months, are either planned every eighteen months or so, or conducted on an emergency basis. The record further reflects that during such outages, the Respondent supplements its RPT staff with individuals (HP's) supplied to it by two independent contractors, Bartlett Nuclear and NSS Numanco.[8] These HP's have never been included in or considered to be part of the unit of RPT's represented by Local 1576.[9]

In 1988, after HP's began contacting the IBEW and its member locals seeking representation, the IBEW began a campaign to organize the HP's into a nationwide unit which would be represented by a newly created Local 1500. By 1989, the IBEW began contacting and meeting with the HP's, and in March 1990, it called a nationwide strike among the HP's employed at various nuclear utilities throughout the county, including those furnished by Bartlett Nuclear at the Diablo Canyon nuclear facility in California owned by Pacific Electric and Gas Co (PE&G). The strike was of short duration, lasting from one to seven days, after which the employees unconditionally offered to return to work. Except for Bartlett Nuclear HP's employed at the Diablo Canyon facility, all striking employees were returned to work.[10] Bartlett Nuclear's refusal to reinstate the strikers at the Diablo Canyon facility became the subject of an unfair labor practice charge filed by a local of the IBEW. At that hearing, Bartlett claimed that it was not responsible for the strikers' discharge because it was PE&G who made the decision and which, implicitly, exercised control over said employees.[11] Although Bartlett Nuclear was found to be liable, its contention regarding PE&G's involvement and control exercised over the HP's planted a seed of doubt within IBEW as to which of the parties, the utility or the contractor, was the HP's true employer. Crawshaw testified that two other incidents which served to confirm

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[6] For the sake of clarity, the RPT's furnished to utilities by contractors shall be referred to herein only as HP's.

[7] The agreement was entered into between the Respondent and System Council U-2 on behalf of its member locals, including Local 1576 (JX-9).

[8] The Respondent's right to subcontract out work such as that performed by HP's during outages is set forth in the parties' collective bargaining agreement (JX-1, Art. V, N2), and was first established in a 1944 arbitration, known as the Alger award (JX-2;).

[9] Bartlett Nuclear and NSS Numanco are just two of several contractors engaged in the business of supplying support services to Respondent and other utilities nationwide. Other contractors include Applied Radiological Control, General Technical Services/Duratech (GTS), and Institute for Resource Management. Bartlett Nuclear, however, is by far the largest of these contractor, controlling over 50% the work.

[10] The Respondent's Salem facilities were also affected by the job action.

[11] See, Bartlett Nuclear, 314 NLRB 1 (1994). PE&G was not a party to those proceedings, and no finding was made with respect to its involvement in the unlawful decision not to rehire the strikers.

the IBEW's belief in this regard. He noted, for example, that in 1992 five employees who had engaged in the 1990 strike at different locations sought but were denied employment with Consumer Powers, a Michigan-based utility. Recalling the position taken by Bartlett at the earlier hearing, an unfair labor practice charge was filed against both Consumer Powers and the contractor, GTS, and following a hearing before an administrative law judge, a finding was made that the utility, not the contractor, had been responsible and was solely liable for not hiring the five individuals. Crawshaw further testified that in 1992, he attempted to organize a group of HP's employed under contract at a Shoreham Nuclear facility in Brooklyn, New York. At a representation hearing, the contractor, GTS, contended, and the Board agreed, that the utility controlled the HP's terms and conditions of employment, and that given these facts the contractor would be unable to engage in a meaningful collective bargaining relationship.

These three incidents, according to Crawshaw, convinced the IBEW to abandon plans to organize the HP's into nationwide bargaining unit, and to focus instead on ascertaining the true relationship between the utilities and the contractors and the extent of control being exercised by the utilities over the HP's. In furtherance of this goal, the IBEW, more particularly Crawshaw, in early 1993 prepared a questionnaire addressing three categories of information: (a) the financial relationship between the utility and contractors Bartlett Nuclear and NSS Numanco, (b) the degree of supervision, if any, exercised by the utility over the HP's, and (c) the degree of control exercised by the utility over the terms and conditions of employment of these employees (see, JX-5; GCX-1[c])). The questionnaire, along with a letter addressed to the particular utility, was prepared by Crawshaw and forwarded only to those locals that represented in-house RPT's of a utility, that had a collective bargaining agreement with a utility which had experienced an outage within the past year, and where the utility having employees represented by the local had utilized Bartlett Nuclear as a contractor. Under this criteria, eight locals, one of which was Local 1576, was asked by the IBEW to seek the information requested on the questionnaire from their respective utilities. Of these, only seven agreed to do so. One of the seven locals forwarded the questionnaire to Washington Public Power Supply (WPPS), a public utility employer. WPPS responded by forwarding a copy of its contract with Bartlett which, according to Crawshaw, showed that WPPS determined the wages, benefits, and work schedules of the HP's supplied by Bartlett, and served to further confirm his belief that the utility, and not the contractor, controlled the contracted employees' terms and conditions of employment.[12]

System Council President Wolfe also offered testimony regarding the problems he and the various member locals of the System Council were experiencing with the Respondent stemming from its subcontracting relationships. He testified, for example, that since about 1991, the locals' business agents had been complaining about the difficulty they were having in obtaining information from Respondent regarding its subcontracting arrangements. Wolfe claims that while Respondent did inform him when it would be retaining a contractor, it provided no information as to the nature of the work to be performed, how many employees were being hired, how long they would be retained, or who would be supervising them. Wolfe also testified that while the outages usually lasted only several months, which presumably would have ended the need for the contractor provided HP's, he personally observed that many of the HP's were kept on the job during non-outage periods, and stated, without contradiction, that beginning in

[12] The other six utilities who were recipients of the questionnaire are Connecticut Yankee, GPU, Ducane Lighting, Georgia Power, Vermont Yankee, and, of course, the Respondent. Charges were subsequently filed with the Board against all six utilities. No charge, however, was filed against WPPS because of the International Union's belief that as a public utility the Board lacked jurisdiction over it.

1990 and continuing to the present, there had been little or no expansion in the number of union-represented RPT's on the job. These factors convinced him that the Respondent was retaining the HP's to avoid having to promote or hire other employees into the ranks of RPT's and that such conduct was having an adverse affect on the bargaining units represented by the Council's member locals. On January 18, 1990, System Council U-2 and Local 1576, jointly filed a grievance alleging that the Respondent had violated certain provisions of its collective bargaining agreement "by the de facto creation and maintenance of a "parallel work force" through multiple subcontracting of bargaining unit work ordinarily performed by...bargaining unit employees." (GCX-2). This grievance was one 13 similar grievances that had been filed by various locals. In 1993, these grievances were combined for arbitration. Soon after the start of the arbitration hearing, the hearing was postponed because the parties began engaging in what was described as "mutual gains" bargaining which, according to Wolfe, was intended to "lessen the use of contractors on the property and further the use of our people to do jobs." (Tr. 103). Wolfe testified, credibly and without contradiction, that while certain issues have been resolved through the "mutual gains" bargaining process, the question regarding the alleged use of HP's to perform bargaining unit work has not been resolved. The arbitration has remained in abeyance since then. Regarding the questionnaire, Wolfe testified, without contradiction, that it was given to him by IBEW International representative, Larry Rossa, with the suggestion that he should try to get Respondent to answer the questions. He in turn gave the questionnaire to Alfieri and asked him to submit it to the Respondent, indicating that System Council hoped to use the information obtained to further pursue the "parallel workforce" grievance and would be of further use to the Council during the "mutual gains" bargaining.

Local 1576, in the meantime, had received information from Steven Spiese, who has been employed as a RPT with Respondent since 1985, regarding the HP's duties at the workplace.[13] Spiese testified, credibly and without contradiction, that he worked side by side with HP's at Respondent's facilities and observed that they performed the same work and worked the same hours as Respondent's own RPT's. He further observed that the HP's were being supervised by RPT department supervisors, and that the latter played an active role in selecting which HP's would be hired by screening their resumes and thereafter placing them in the appropriate classification.[14] Respondent's supervisors, according to Spiese, assigned work to the HP's, scheduled their work hours and, when necessary, imposed discipline. Further, Spiese testified that he had personally observed HP's working for Respondent during non-outage periods, and had personal knowledge that HP's supplied by both Bartlett Nuclear and NSS Numanco had remained in Respondent's employ for at least two years. Finally, Spiese claims that from 1990 to 1993, the number of RPT's employed by Respondent has either declined or remained about the same. In this regard, his testimony is in accord with Wolfe's own claim that since 1990 there had been little or no increase in the number of RPT's in Respondent's employ.

Armed with the above information, Local 1576 President, Jim Alfieri, on May 18, 1993, sent Respondent the letter and questionnaire (JX-5; GCX-1[c]) given to him by Wolfe to Respondent's Vice President of Nuclear Operations, Joseph Hagen, expressing the Local's concern regarding the extent to which the Respondent was using HP's to perform bargaining unit work, and asking that he furnish Local 1576 with the requested information. The letter in its entirety reads as follows:

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[13] Spiese, formerly Local 1576's treasurer, is currently Local 94's recording secretary.

[14] Although he had no direct knowledge regarding the Numanco-supplied HP's, Alfieri testified he believed that HP's referred by both contractors were hired in the same manner, e.g., by Respondent's supervisors.

> Local 1576 is investigating the extent to which Public Service Electric and Gas Company may be using non-bargaining unit personnel to perform work which is covered by our collective bargaining agreement. We are aware of the increasing practice among union-represented utilities to contract with nonunion employers or worker-referral agencies to furnish personnel to perform bargaining unit work without extending to these personnel the guarantees, safeguards, rights, privileges, fringe benefits, and layoff-recall provisions of the collective bargaining agreement and without granting bargaining unit employees the first opportunities to fill these jobs.
>
> These nonunion operations erode the bargaining unit, endanger the financial integrity of negotiated wages and fringe benefits, and threaten union member's jobs. These nonunion operations may violate a number of articles and provisions of our collective bargaining agreement; therefore, we must determine at the outset the necessity for grieving as well as whether the issue of erosion of bargaining unit work should be addressed in collective bargaining negotiations or elsewhere.
>
> It has come to our attention that PSE&G Co. has retained or is operating such a nonunion company known as Bartlett Nuclear and NSS Numanco. We believe that there is a connection between PSE&G Co., Bartlett Nuclear and NSS Numanco, either financially or through management personnel, or both, and we believe the object of utilizing Bartlett Nuclear and NSS Numanco is to circumvent the provisions of our collective bargaining agreement. As part of our investigation of this matter, we are contacting you directly for pertinent information.
>
> To determine the appropriateness of a grievance and/or to determine whether these matters can be resolved in negotiations in a timely manner, we require a response to the attached questionnaire within two weeks of the date of receipt of this letter. If you are unable to provide all the information you can and state under oath why you cannot furnish the rest.

On June 11, 1993, Respondent's Manager of Management Services, Andrew Michel, responded to Alfieri's letter, expressing his disappointment at what he described were the "outrageous charges" made by Local 1576 (see JX-6). Specifically, Michel denied that Respondent operated and/or controlled either Bartlett Nuclear or NSS Numanco, stating that while Respondent from "time to time" contracts with the above companies, this did not constitute a breach of the collective bargaining agreement because Article V, Section N2 of that agreement guarantees Respondent's right to engage in contracting out of work, provided it does not result in a layoff, curtailment, or downsizing of employees represented by Local 1576. The letter goes on to state that because Respondent's contractual arrangement with the above companies had not affected unit employees in any of the above-described ways, Local 1576's claim that the Respondent "may have violated the agreement is without merit." Michel also pointed out in his letter that if Local 1576 believed that the contract had been violated, the "accusations" in Alfieri's May 18, letter were not good faith inquiries because Local 1576 was aware that the such assertions were encompassed within a "parallel workforce" grievance that had been filed by System Council Union U-2 against Respondent raising similar issues. Finally, Michel asserts that to the extent Local 1576 was seeking to have Respondent "cease doing business" with these two nonunion companies, any such agreement between Respondent and Local 1576 would constitute an unlawful "hot cargo" agreement, and that Respondent could not enter into such an agreement. Regarding the information requested by Alfieri, Michel stated that "unless you can provide us with objective facts which establish that the information requested is relevant to the performance of your obligation as the collective bargaining

representative of our employees, we do not intend to respond."

Michel testified that during a subsequent conversation with Alfieri, he asked Alfieri whether he believed what he had written in his May 18, letter. According to Michel, Alfieri responded that he was simply doing his job, and when Michel inquired further, Alfieri stated that "this was an International thing that Charlie Wolfe and them wanted him to sign and he signed it." Alfieri allegedly told Michel that "this isn't between us; this is the International and something they have to do, so it's part of the job," and that he (Alfieri) felt "like I had to sign" the letter.

Alfieri recalled having a conversation with Michel after sending the May 18, letter, but denied making the above statements attributed to him by Michel.[15] By letter dated August 30, 1993, Alfieri replied to Michel's June 11, letter stating that Local 1576 was not seeking the information identified in the May 18 letter because of Respondent's use of contract personnel, but rather because of its belief that Respondent "may be employing non-bargaining unit personnel to perform work which is covered by our collective bargaining agreement." (JX-7). Alfieri noted in his letter that the provisions in the parties' agreement which the Union believes may have been violated "are those that refer to wages, fringe benefits, promotions, lay-off recall provisions, seniority, bidding rights, and all other parts of the collective bargaining agreement which may have been denied to these, so called, contract employees who may, in fact, be bargaining unit personnel." The August 30, letter advises Respondent that the issues raised are different from that presented in the "parallel workforce" grievance mentioned in Michel's letter, and that Local 1576 had no interest in being a party to a "hot cargo" agreement, and was at a loss to understand how Respondent could have arrived at such a conclusion. Alfieri concludes his August 30 letter by stating, "I trust this will clarify any further questions you may have had and that the overdue information will be forthcoming in a timely manner."

Michel testified that within a month of receiving the August 30, letter, he had a very brief discussion with Alfieri during which he informed him he had received the latter's letter and further commented, "I guess we're going to continue with the writing campaign." (Tr. 206). Michel claims that Alfieri responded that he was simply doing what he had to do. Michel initially stated he did not respond to Alfieri's remark, but subsequently added that Alfieri was somewhat apologetic for having sent the letter, and that after Alfieri made his comment, he (Michel) responded that he too would do what he had to do.

In a September 19, 1993 response to Alfieri's August 30, letter, Michel reminded Alfieri that in his May 18, letter, the latter had sought the information because of its belief that there was a connection between the Respondent and contractors Bartlett Nuclear and NSS Numanco, the object of which was to circumvent the provisions of the collective bargaining agreement. The letter goes on to state that Local 1576 was now more simply contending "that unnamed persons are performing unidentified work normally performed by represented employees. Michel concludes by stating that "[b]oth the generality of this charge, and your failure to specify the information which Local 1576 believes it needs to police the collective bargaining agreement, prevent us from responding to your request. More specifics are required before it can be determined whether the Union has requested relevant information, which Public Service Electric and Gas Company either possesses or has a duty to disclose." The information requested apparently has not been provided and no further request for the information has been made. On March 4, 1994, the International Union filed the charge, giving

[15] At the time of the hearing, Alfieri was employed as a rad waste water management supervisor with Respondent and, as such, was not a member of the bargaining unit.

rise to this proceeding.

B. Discussion and Findings

The General Counsel alleges, and the Respondent denies, that the refusal to provide Local 1576 with the information sought in the questionnaire amounted to an unlawful refusal to bargain and violated Section 8(a)(5) and (1) of the Act. The Board, with judicial approval, has long held that an employer's duty to bargain in good faith with the bargaining representative of its employees includes the duty to provide information that is needed by the bargaining representative for the proper performance of its duties, including information relevant to contract administration and negotiations. Saginaw General Hospital, 320 NLRB 748, 750 (1996); National Broadcasting Co., 318 NLRB 1166, 1168-1169 (1995); Hobelmann Port Services, 317 NLRB 279 (1995); Shoppers Food Warehouse, 315 NLRB 258, 259 (1994); NLRB v. Acme Industrial Co., 385 U.S. 432, 435-436 (1967). The question of whether particular information needs to be provided hinges on whether there is a probability that the desired information is relevant and will be of use to the representative in carrying out its statutory duties and responsibilities. Bohemia, Inc., 272 NLRB 1128, 1129 (1984). When the information sought pertains to employees who are actually represented by a union, such information is deemed to be presumptively relevant and necessary and must be produced. Hobelmann Port Services, supra; T.U. Electric, 306 NLRB 654, 656 (1992).[16] But where the requested information involves matters outside the bargaining unit, such as where the precipitating issue or conduct is the subcontracting of work performable by employees within the appropriate unit, a union bears the burden of establishing the relevancy of and necessity for such information. Ohio Power Co., 216 NLRB 987, 991 (1975), enfd. 531 F.2d 1381 (6th Cir. 1976). The burden of doing so, however, is not an exceptionally heavy one, requiring only that a showing be made of a "probability that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." NLRB v. Acme Industrial Co., 385 U.S. 432, 437 (1967); see also, Shoppers Food Warehouse, 315 NLRB 258, 259 (1994); Postal Service, 310 NLRB 391 (1993). In this regard, the union is not required to show that the facts it relied on to support its information request are accurate or reliable. Indeed, such requests may reasonably be based on hearsay reports. Magnet Coal, 307 NLRB 444, fn. 3 (1992); Shoppers Food Warehouse, supra.

As the information requested by Local 1576 relates to the business relationship between the Respondent and its contractors, and to the control allegedly exercised by the former over nonunit employees provided to it by said contractors, the information is not presumptively relevant. The General Counsel thus was required to show that when Local 1576 made its request, it had a reasonable basis for believing that the information would be of use in carrying out its statutory obligations. The General Counsel has satisfied his burden in this regard. Thus, contrary to Respondent's assertion in its posthearing brief (p. 19), that Local 1576's information request was based on nothing more than "mere suspicion", Spiese's observations regarding the nature of the work being performed by HP's and the degree of control being exercised by Respondent's supervisors over said employees, and his further testimony, again based on personal observations, that HP's were being retained for periods of up to two years and had remained so employed during non-outage periods, provided Local 1576 with the objective evidence required to satisfy its burden of proof. Somerville Mills, 308 NLRB 425, 441 (1992); Barnard Engineering Co., 282 NLRB 617, 620 (1987); Union Builders v. NLRB, 68 F.3d

[16] Where, however, the presumptively relevant information is found to be confidential, the information need not be produced until some safeguards are provided. Detroit Edison v. NLRB, 440 U.S. 301 (1979).

520, 524 (1st Cir. 1995). Thus, Spiese's personal observations, buttressed by reports that Bartlett Nuclear and other contractors were claiming at other Board proceedings that they lacked control over such HP's, would reasonably have led Local 1576 to believe that the HP's might indeed be bargaining unit employees entitled to the contractual benefits enjoyed by other unit employees, and that the Respondent was using its subcontracting arrangement with Bartlett Nuclear and NSS Numanco to circumvent the collective bargaining agreement and avoid having to pay HP's the benefits called for in that agreement. The information would also be of use to Local 1576 in determining whether the Respondent was, in fact, allowing HP's to perform bargaining unit work and possibly eroding the bargaining unit work to which its members were entitled under the contract. The information sought in the questionnaire was therefore necessary for and relevant to Local 1576 for purposes of determining if, in fact, Respondent was in breach of its collective bargaining agreement, [17] and for deciding what, if any, legal or other course of action it might want to pursue if its fears proved to be well-founded. Finally, it is patently clear that the information would be relevant to Local 1576, as well as to the System Council, in pursuit of its "parallel workforce" grievance.

The Respondent in its posthearing brief contends that Local 1576 failed to provide "even one fact showing why the requested information was needed, or relevant to the Local's role as the exclusive bargaining representative [of the RPT's]." (Resp. Br. p. 11). The Respondent's contention is without merit. Initially, it should be noted that Local 1576 provided Michel with a full and clear explanation as to why the information was needed. Thus, as evident from a plain reading of his May 8, letter, Alfieri states therein that Local 1576 needed the information because of its belief that Respondent was using the contractor-provided HP's "to perform bargaining unit work without extending (to them) the guarantees, safeguards, rights, privileges, fringe benefits and layoff-recall provisions of the collective bargaining agreement and without granting bargaining unit employees the first opportunities to fill these jobs," and because it believed that Respondent was using its contractual arrangement with the above contractors to "circumvent the provisions of our collective bargaining agreement." In his August 30, letter, Alfieri, suspecting from Michel's June 11, response that the latter may have declined to provide the information because he did not understand the nature of the information request, reassured him that Local 1576 was not questioning Respondent's right to engage in subcontracting, but was instead "investigating the extent to which PSE&G may be employing non-bargaining unit personnel to perform work which is covered by our collective bargaining agreement" which could be having an eroding effect on work available to bargaining unit members. (JX-7; JX-4). Given Wolfe's and Spiese's testimony that the number of RPT's employed by Respondent since 1990 had remained fairly stagnant while the number of HP's used by Respondent had been steadily increasing, Local 1576's fears concerning the erosion of bargaining unit work were reasonably based. Alfieri further pointed out Local 1576's belief that Respondent may have violated the contract by failing to apply to the HP's, whom it believed were doing bargaining unit work, those provisions in the agreement relating to "wages, fringe benefits, promotions, lay-off recall provisions, seniority, bidding rights," and possibly others. Local 1576's reasons for needing the information were therefore plainly stated by Alfieri in both of his written communications to Michel. Michel's June 11, response denying that Respondent had violated

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[17] For example, Spiese's testimony that HP's had remained on the job for up to two years and during nonoutage periods could reasonably have led Local 1576 to believe that the Respondent was failing to comply with the "seasonal employee" and "union security" provisions of its collective bargaining agreement, which require that seasonal employees retained for more than six months be made permanent and, within 30 days thereafter, "affiliate" with Local 1576 (see, JX-1, p. 16, Art. IV,C; p. 7, Art.II,D,2)

its agreement,[18] and contending that the issues raised by Alfieri were "encompassed within the 'parallel workforce' grievance," convinces me that Michel fully understood the nature of the information request and why Local 1576 felt it needed the information. Further, even if I were to believe, which I do not, that Michel did not understand from the May 18, letter why the information was being sought, any such doubts would have been resolved by Alfieri's August 30, letter which further explained to him why the information was being sought, and the provisions in the contract that Local 1576 believed may have been violated.[19] Compare, Island Creek Coal Co., 292 NLRB 480 (1989) Thus, I find that the Respondent was put on notice through the May 18, letter, or in any event by no later than August 30, that the information sought by Local 1576 through the questionnaire was relevant to Local 1576's statutory duty to monitor compliance with its agreement, and generally to its role as the exclusive bargaining representative of Respondent's RPT employees. Local 1576 was under no obligation to prove that Respondent had in fact violated its agreement before being entitled to the information, as Michel appeared to be suggesting in his June 11, letter when he insisted that Alfieri first provide him with "objective facts" before any response to the information request could be made.[20] In Island Creek Coal Co., supra at 487, the Board noted that in assessing the relevance of information sought by a union, it "does not pass on the merits of the union's claim that the employer breached the collective-bargaining contract or committed an unfair labor practice; thus, the union need not demonstrate that the contract has been violated in order to obtain the desired information," supra at 487, citing to an earlier decision in W-L Moulding Co., 272 NLRB 1239 at 1240 (1984). The Board noted further that if indeed the union had sufficient information to prove contractual violations, it would not need to request information from the employer, citing Doubarn Sheet Metal, 243 NLRB 821, 824 (1979).

Respondent's Other Defenses

[18] Local 1576 was under no obligation to accept Michel's June 11, representation that Respondent had not violated its collective bargaining agreement, or that its relationship with Bartlett Nuclear and NSS Numanco was having no adverse effect on bargaining unit employees, and was clearly entitled to conduct its own investigation and to reach its own conclusions. Reiss Viking, 312 NLRB 622, 625 (1993).

[19] In his September 19, response to Alfieri's August 30, letter, Michel makes clear that he understood Local 1576's concern to be that "unnamed persons are performing unidentified work normally performed by represented employees." Thus, there is no question that Michel was well aware that Local 1576 felt it needed the information because it believed that Respondent was allowing HP's to perform bargaining unit work to the detriment of unit employees. Michel's refusal at this time to provide the information was premised on what he asserts was "the generality of this charge, and your failure to specify the information which Local 1576 believes it needs to police the collective bargaining agreement." As to the latter assertion, Local 1576's questionnaire specifically sets forth the information it was seeking from Respondent and, in my view, was neither unclear or ambiguous. However, even assuming arguendo that Local 1576's request for information was in some way ambiguous or not specific enough for Michel, this would not have excused Michel's blanket refusal to comply with the information request to the extent it encompassed necessary and relevant information. Keauhou Beach Hotel, 298 NLRB 702 (1990). Michel's claim that he needed "more specifics" would not have put Local 1576 on notice as to what in its information request needed to be further clarified or explained.

[20] Michel's overall poor demeanor on the witness stand causes me to doubt his overall reliability as a witness. On one occasion, when asked by me to explain what he was looking for in the way of "objective facts" Michel gave very confusing and ambiguous answer on which I place no credence (Tr. 222).

The Respondent argues that the information sought was really intended to benefit the International Union in its continuing efforts to organize the HP's into a nationwide bargaining unit, and that Local 1576 had no real interest in the information and was simply being used as a "stalking horse" for the International Union. It points out that it was the International Union which prepared the questionnaire, and which filed the charge in the case without so much as consulting with Local 1576, and that if Local 1576 had any real interest in the information, it could have acted on its own. Essentially, the Respondent claims that no violation of the Act can be found to have occurred from its refusal to comply with the May 18, information request because the information sought was intended to be used by the International Union for the above-described organizational purposes, and not for the reasons claimed by Local 1576 in the May 18, letter. It further suggests, implicitly, that as it had no bargaining relationship with the International Union, and as Local 1576 presumably had not authorized the International Union to file the charge on its behalf, the International Union lacked standing to file the charge and was engaging in an abuse of the Board's processes. I disagree.

That the International Union, and not Local 1576, filed the charge in this matter is of no consequence for under Board Rules and Regulations, any person, which by definition includes a labor organization,[21] is free to file a charge for any reason, and the fact that Local 1576 may not have been consulted or informed by the International Union prior to its filing does not render the charge invalid.[22] Apex Investigation & Security Co., 302 NLRB 815, 818 (1991); Newspaper Guild Local 82 (Seattle Times), 289 NLRB 902, 907 (1988); M.J. Santulli Mail Services, 281 NLRB 1288, 1296 (1986). The Respondent, in any event, proffered no evidence to substantiate its claim that Local 1576 was without knowledge or did not approve of the filing of the charge on its behalf. Further, the fact that the information requested by Local 1576 might be used for other purposes does not render the charge invalid or relieve Respondent of its duty to provide the information. The Board in this regard has long held that "where a party requests information that is relevant to that party's collective bargaining needs, it is irrelevant that there may also be other reasons for the request or that the information may be put to other uses." Central Manor Home for Adults, 320 NLRB 1009, 1011 (1996); see also, Electrical Workers IBEW Local 292 (Sound Employers Assn.), 317 NLRB 275, 276 (1995). In any event, Crawshaw's undisputed testimony, which I credit, reveals that the International Union abandoned plans to organize the HP's on a nationwide basis after learning that Bartlett Nuclear and other contractors had asserted in other Board proceedings that they lacked control over the HP's being furnished by them to the various utilities, and serves to undermine the Respondent's claim that the information was intended for use by the International Union in furtherance of its abandoned organizational efforts.

The Respondent also claims that the charge is time-barred by Section 10(b) of the Act, as it was filed on March 4, 1994, more than six months after Respondent's June 11, 1993 denial of the information requested in Local 1576's May 18, 1993 letter and questionnaire.[23] I

[21] See Sec. 2(1) of the Act.

[22] The Respondent does not contend, nor does the record in any event show, that the Local 1576's intent was to harass Respondent through its information request. See, Hawkins Construction Co., 285 NLRB 1313 (1987).

[23] The Respondent contends that "the record is devoid of proof" as to when it was served with the charge. (Resp.'s br. p. 14, fn. 9). Its contention is without merit for GCX-1(b), which is a March 7, 1994 letter from the Regional Director to Michel notifying him of the charge, reflects that such notification and service of the charge was made on Respondent by certified mail, and the return receipt reflects delivery to Respondent's agent was made on March 8.

disagree. In A & L Underground, 302 NLRB 467 (1991), the Board held that the 6-month limitations period begins to run only when a party has "clear and unequivocal" notice of a violation of the Act. The Respondent's June 11, letter does not, in my view, meet the "clear and unequivocal" standard set forth in A &L Underground. While the Respondent in its June 11, letter declined to comply with Local 1576's request, Michel's statement therein, that Respondent did not intend to respond until Local 1576 presented "objective facts" showing how the information sought was relevant to Local 1576's duty as the employees' bargaining representative, left open the possibility that Respondent would comply with the information request on receipt of such "objective facts." Given the conditional nature of Michel's response, it cannot be said that Local 1576 had "clear and unequivocal" notice that Respondent was engaging in any unlawful conduct. In any event, the amended complaint alleges that the unlawful refusal to provide the information occurred with Michel's September 19, letter, not the June 11, letter. As such, the unlawful conduct falls squarely within the 10(b) period. Finally, the fact that a charge could have been filed on the basis of the June 11, conduct does not mean that Local 1576 was precluded from doing so based on Michel's subsequent refusal to comply with the information request on September 19, for each such request for information and refusal to comply therewith gives rise to a separate and distinct violation of the Act. Rest Haven Nursing Home, 293 NLRB 617, 618 (1989).

Finally, I agree with the General Counsel that the facts in this case are distinguishable from Connecticut Yankee Atomic Power Co., 317 NLRB 1266 (1995), wherein the Board found an employer's refusal to comply with the identical information request not to be unlawful. Here, Local 1576, unlike the union in the above case, does not seek the information in order to determine whether the Respondent and the contractors are joint employers, but rather is contending that the Respondent may in fact be the sole employer of the HP's. If true, the HP's could very well be considered part of the bargaining unit and Respondent's failure to apply the terms of its collective bargaining agreement to such employees might constitute a breach of that agreement. In Connecticut Yankee, the General Counsel conceded, and the Board found, that under a joint employer theory, which was the sole basis for the union's request in that case, it did not necessarily follow that the HP's would automatically be included in the same unit with the employer's RPT's. It should be noted, however, that while the Board in that case rejected the union's claim regarding the relevancy of the requested information, it left open the possibility that the information might be found relevant if "the union's suspicions about the relationship between the respondent and Bartlett should change." Supra, at 1268, fn. 16. As the theory and issues raised in this case are substantially different from that presented to the Board in Connecticut Yankee, the Board's holding in that case are, in my view, not controlling here. Accordingly, I conclude that by refusing to provide Local 1576 with the information requested in the questionnaire accompanying Alfieri's May 18, letter, the Respondent violated Section 8(a)(5) and (1) of the Act, as alleged.

Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. International Brotherhood of Electrical Workers, AFL-CIO, and its Local 1576 are labor organizations as defined by Section 2(5) of the Act.

1. By failing and refusing to provide Local 1576 with the information requested in the questionnaire appended to this decision as Attachment A, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom, and that it take the affirmative action of supplying Local 1576 with the requested information, and to post the usual notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[24]

ORDER

The Respondent, Public Service Electric and Gas Company, Hancocks Bridge, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively and in good faith with International Brotherhood of Electrical Workers, AFL-CIO, Local 1576, by refusing to furnish Local 1576 with the information requested in its

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish forthwith the information requested by Local 1576 in the questionnaire.

(b) Within 14 days post at its facilities in Hancocks Bridge, New Jersey, copies of the attached notice marked "Appendix."[25] Copies of the notice, on forms provided by the Regional

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[24] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[25] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings the Respondent has gone out of business, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Respondent at any time since March 4, 1994.

(C) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C.

_____
George Alemán
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively and in good faith with Local 1576 of the International Brotherhood of Electrical Workers, AFL-CIO, by refusing to provide them with the information requested in its May 18, 1993 letter and questionnaire.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish Local 1576 with the information requested in its May 18, 1993 letter and questionnaire.

PUBLIC SERVICE ELECTRIC
AND GAS COMPANY

(Employer)

Dated _____ By _____

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 615 Chestnut Street, 7th Floor, Philadelphia, PA, 19106–4404, Telephone 215–597–7643.